

State Board of Accounts County Recorders' Annual Conference

Presented by:
The Office of the Public Access Counselor
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Access to Public Records Act (APRA)



- Indiana Code § 5-14-3-1 through 5-14-3-10
- Enacted in 1983 ("APRA")

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master.

Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record."

What is a public record

See Indiana Code § 5-14-3-2(m) for the definition of "public agency" in APRA.

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code § 5-14-3-2(n)

Three Categories of Public Records



Disclosable



Confidential



Disclosable at the discretion
of the public agency

Responding to APRA Requests

Time frames for responding to APRA Requests depends on the manner in which the public agency receives the request.



IC 5-14-3-9 concerns denial and remedies, but also sets forth times for response:

- If requestors is **physically present** in the office of the agency, makes the request by **telephone**, or requests **enhanced access** to a document and, the agency has twenty-four (24) hours to respond.
- **(enhanced access=on disk or through remote computer)**
- If the request is made by **mail** or by **facsimile** the public agency has 7 days from the date the public agency received the request to respond.
- Important: Production of documents is not required in these time frames, but within a reasonable time.

Right to Inspect and Copy Public Records

IC §5-14-3-3, in relevant part, sets forth general rule of APRA:

- Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, **except as provided in section 4 of this chapter.**
- A request for inspection or copying must:
 - (1) identify with reasonable particularity the record being requested; and
 - (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.
- No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute.
- A public agency may not deny or interfere with the exercise of the right stated in subsection (a).
- The public agency shall either:
 - (1) provide the requested copies to the person making the request; or
 - (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.



Exceptions to disclosure

- Confidential Public Records-IC 5-14-3-4(b)
- Categories of public records that are confidential and cannot be disclosed *unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery*

Confidential Public Records



Those confidential by state statute or federal law (i.e. IC 4-6-9-4)



Social Security Numbers contained in public records



Patient medical records unless the patient gives written consent



Trade secret information



Certain foreclosure information



Grade transcripts/license exam scores in licensure process

Exceptions to disclosure



Discretionarily disclosable public records
IC 5-1-3-4(b)

Public agencies must exercise this discretion uniformly, subject to review under an arbitrary and capricious standard.

Public agencies may exercise their discretion as to certain categories of public records to withhold them from disclosure.

Discretionary Categories-I.C. 5-14-3-4(b)

- Investigatory records of law enforcement agencies
- The work product of an attorney representing, pursuant to state employment or an appointment by a public agency, a public agency, the state or an individual.
- Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.
- Personnel files of public employees and files of applicants for public employment, however certain information must be provided upon request including compensation, business telephone number, dates of first and last employment, etc

Expunging Records

Expunge – To blot or scratch out, as from a record or list; obliterate; efface.

- Administrative Rule 9:
 - All orders of expungement entered in criminal or juvenile proceedings orders to restrict access to criminal history information pursuant to Ind. Code § 35-38-5-5.5 or Ind. Code § 35-38-8-5 and records excluded from public access by such orders, and information related to infractions that is excluded from public access pursuant to Ind. Code § 34-38-5-15 or Ind. Code §
- http://www.in.gov/pac/informal/files/Lake_Superior_Court_expungement_letter_for_Justin_Murphy.pdf
- I.C. 31-33-27; Expungement of Child Abuse or Neglect Reports
- I.C. 35-38-5; Expungement of Arrest Records
- Follow Court's Orders; consult with County Attorney; contact Public Access Counselor

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Expunging Records

House Bill 1219 – IC 36-1-8.5

- Applies to judges, law enforcement officers, victim of domestic violence
- Eligible party must submit a request to have their home address restricted from disclosure
- "A covered person who wants to restrict access to the covered person's home address by means of the public property data base web site must submit a written request to the unit. As part of the process developed by the unit under section 7 of this chapter, the unit may."
- "A unit may not be held civilly liable for failure to timely restrict disclosure of an address under this chapter unless the unit's act or omission constitutes gross negligence or willful or wanton misconduct."

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Other Items of Note under APRA



Copying Fees

- I.C. 5-14-3-8
- Records Fee Statute – IC 36-2-7-10
 - House Bill 1175
- Prior Opinions of the Public Access Counselor
 - 07-FC-241
 - 07-FC-243
 - 11-INF-02

Access to Public Records Act

Electronic Mail

- A public record is any record, including electronic media, that is created received, retained, maintained, or filed by or with a public agency.
- Electronic mail must be available for inspection and copying by the governing body unless an exception to disclosure, based on the content of the email, applies.
- Electronic mail must be maintained in accordance with records retention schedules, pursuant to I.C. 5-15.
 - Most agencies have their own retention schedules.

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Common Misconceptions of Requestors

- A public agency has to answer my questions under APRA.
- A public agency has to keep public records forever so it is not appropriate to respond that the record no longer exists.
- A public agency must handle public records requests before handling other matters of the public agency.
- A public agency must keep public records in a format that is most convenient for me.

Other common misconceptions

- Offering to allow inspection is always sufficient. **See 11-FC-238**
- All disclosable records requested must be produced within 7 days of receiving the request. **See 11-FC-74**
- Denials do not have to be explained with specificity.
- All documents containing medical information, children's names or personal information are confidential.
- Any document containing confidential information may be omitted from public records response. **See 10-FC-7**

Remedies and penalties for noncompliance



- Complaint to Public Access Counselor
- Bad press and damage to public perception
- Court action seeking order to produce records and potentially order to pay attorney's fees
- Fines for knowing and intentional withholding of public records

Thank you for your participation

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Access to Public Records Act:

<http://www.in.gov/legislative/ic/code/title5/ar14/ch3.html>

Public Access Handbook:

http://www.in.gov/pac/files/pac_handbook.pdf

Public Access Counselor Website:

<http://www.in.gov/pac/>
